

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER OTIS WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

July 22, 2010

No. 291403

Wayne Circuit Court

LC No. 07-021446-FC

Before: SAWYER, P.J., and BANDSTRA and WHITBECK, JJ.

PER CURIAM.

A jury convicted defendant Christopher Williams of carjacking¹ and armed robbery.² The trial court sentenced Williams to consecutive prison terms of 15 to 30 years' imprisonment for the carjacking conviction and 10 to 20 years' imprisonment for the armed robbery conviction. He appeals as of right. We affirm. We decide this appeal without oral argument.³

I. BASIC FACTS

On October 20, 2007, at approximately 2:30 a.m., then 19-year-old Terrance Boyd was in Detroit, Michigan, at a Valero gas station, located in the area of Joy Rd. and Meyers Rd. A man Boyd later identified as Williams was standing near the door to the station when Boyd went in to pay and when he returned to the gas pump. The man was wearing dark blue jeans, a baseball cap, and a white shirt with "like a black coat." The man was about the same height as Boyd, who was 5'7" or 5'8" tall. As Boyd was pumping the gas, the man walked toward Boyd's vehicle, but when another car pulled up and a woman started pumping gas, the man walked toward Meyers Rd. He then came back toward the gas station and spoke to the woman. Boyd turned his back, and the man slid between the two pumps and approached Boyd with a gun. The man touched the gun to Boyd's side and told Boyd to empty his pockets. Boyd then gave him approximately \$300, a chain, and a watch.

¹ MCL 750.529a.

² MCL 750.529.

³ MCR 7.214(E).

The period of time the man stood next to Boyd with the gun to his side was between one and two minutes. During that time, Boyd looked at the man's face and noticed that it was "a little denty" and had a mustache. Boyd gave the man the keys to the car, which belonged to Boyd's aunt. The man got into the car and told Boyd to take the pump out, and Boyd complied. The man instructed Boyd to walk away, so Boyd began walking toward Meyers Rd. A few seconds later, the man said, "Hey, you know what, matter of fact, I don't even want to take the car. I'm going to go ahead and park it around the corner and just get it from there." The man drove off quickly towards Wyoming St.

Boyd walked to his aunt's house where his cousin was waiting to take Boyd home after Boyd returned his aunt's car. His cousin did not have a phone. The two men drove back to the gas station, spoke with the clerk, and then called the police from inside the station. While waiting for the police to arrive, Boyd saw his aunt's car travel through an alley near Joy Rd. and Meyers Rd. Boyd and his cousin followed the car for two or three minutes and then decided to go to a police station, where Boyd provided police with a description of the man.

On October 24, 2007, Boyd received information that the car had been recovered. He then participated in a live lineup and identified Williams. According to Officer Kevin King, it was an "immediate pick." But at trial, defense counsel elicited evidence concerning the dissimilarity of the six individuals in the lineup. Williams was 36 years old; the other men were ages 17, 19, 32, 34, and 42 years old. Williams was 5'5"; the 17-year old was the same height. The other men were 5'7," 5'8," and 6'0." At the time of the lineup, four days after the incident, Williams had a mustache and goatee.

Defense counsel impeached Boyd with inconsistencies concerning:

- whether the man responded when Boyd spoke to him on the way into the station;
- whether Boyd mentioned the "dents" (pockmarks) in the perpetrator's face before the lineup;
- the description of the gun;
- the amount of money taken;
- when he initially called the police;
- whether he called the police a second time as he and his cousin were following Williams;
- whether his cousin went inside the police station with him;
- whether the gas station was well lit; and
- whether the perpetrator had a mustache.

Nevertheless, at trial, Boyd testified that he was "positive" that Williams was the person who robbed him.

Other than Boyd's identification, the prosecutor linked Williams to the crime by the proximity of his address to the location where the car was recovered and references to information that the occupant of the car resided at 8833 Meyers Rd.

On the same date as the incident, Boyd's aunt, Patricia Cornwell, received information about where the car was seen and called the police. However, the car was not there. A second person provided her with information, and Cornwell told the police that the car was on Appoline St., by the alley, which was two blocks from her home. The car was found parked next to the alley in the next block from the gas station. Cornwell did not know the people from whom she received the information. Defense counsel was successful in excluding her testimony that she was told that the suspect lived right behind where the car was parked.

Officer Delbert Jennings testified that he received a police run regarding a carjacked vehicle. Officer Jennings and his partner "received information that the individual who had occupied the vehicle had went in between the houses." He received information from dispatch that the person who was seen coming from the vehicle was "supposed to been an occupant to the second house on Meyers," which was 8833 Meyers Rd. Officer Jennings recovered the vehicle from 8844 Appoline St. A person could walk from where the car was parked, between the houses on Appoline St., into the backyards, and right into the house on Meyers Rd. The car was a block from the gas station. No one answered the door at 8833 Meyers Rd. After Officer Jennings left the location, he and his partner made contact with the officers in charge and reported the recovery of the vehicle. Officer Jennings added, "And then we told them the information that was given to us over the air, where the individual supposed to have been residing, the location he went to, and we just went from there." Officer Jennings did not speak to the person who supposedly made the observations; he received the information from dispatch. His report did not mention receiving information about an address on Meyers Rd., and his activity log does not include going to Meyers Rd. to look for a suspect.

Sergeant David Hansberry was the officer-in-charge of the investigation. He received information from Cornwell and also from Officer Jennings on October 21 or 22. Sergeant Hansberry spoke to Cornwell over the phone and, based on the information that she gave, he did a "work-up" on 8833 Meyers Rd. From the work-up, he determined that Williams lived at the house. He called Boyd before beginning the work-up and got a more detailed description, but Sergeant Hansberry did not have notes of that description. Based on proximity of the crime to Williams' address, along with the description and where the vehicle was recovered, Sergeant Hansberry instructed the officers to place Williams under arrest. Sergeant Hansberry did not talk to any other potential witnesses who may have seen Williams in the vehicle. Sergeant Hansberry noted that there were leads that people may have seen him in the vehicle, but the information that was coming in was anonymous so he had no means to contact those witnesses.

As stated, the jury convicted Williams of carjacking and armed robbery. And Williams now appeals.

II. RIGHT OF CONFRONTATION

A. STANDARD OF REVIEW

Williams argues that his constitutional right to confrontation was violated by the admission of Cornwell's testimony that unidentified individuals had told her where the stolen car was located and admission of the police officers' testimony that they received information that the occupant of the stolen car lived at a specified address on Meyers Rd. Although Williams objected to some of the challenged testimony on the basis of hearsay, a hearsay objection does not preserve a Confrontation Clause challenge.⁴ Generally, the question whether testimony violates a defendant's Sixth Amendment right of confrontation is a question of constitutional law that this Court reviews de novo.⁵ However, we review unpreserved claims of constitutional error for plain error affecting a defendant's substantial rights.⁶

B. LEGAL STANDARDS

A defendant's constitutional right to confrontation is implicated only by the admission of testimonial statements.⁷ "While nontestimonial statements are subject to traditional rules limiting the admissibility of hearsay, they do not implicate the Confrontation Clause."⁸ As discussed in *People v Bryant*,⁹ neither the United States Supreme Court nor the Michigan Supreme Court has set forth a comprehensive definition of "testimonial." However, in *Crawford v Washington*,¹⁰ the United States Supreme Court explained:

The text of the Confrontation Clause reflects this focus [on testimonial hearsay]. It applies to "witnesses" against the accused—in other words, those who "bear testimony." "Testimony," in turn, is typically "[a] solemn declaration or affirmation made for the purpose of establishing or proving some fact." An accuser who makes a formal statement to government officers bears testimony in a sense that a person who makes a casual remark to an acquaintance does not. The constitutional text, like the history underlying the common-law right of confrontation, thus reflects an especially acute concern with a specific type of out-of-court statement.

⁴ *People v Coy*, 258 Mich App 1, 12; 669 NW2d 831 (2003).

⁵ *People v Bryant*, 483 Mich 132, 138; 768 NW2d 65 (2009).

⁶ *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

⁷ *People v Taylor*, 482 Mich 368, 377; 759 NW2d 361 (2008).

⁸ *Id.*

⁹ *Bryant*, 483 Mich at 138-139.

¹⁰ *Crawford v Washington*, 541 US 36, 51; 124 S Ct 1354; 158 L Ed 2d 177 (2004) (internal citations omitted).

The Court further recognized “[v]arious formulations of this core class of ‘testimonial’ statements,” stating:

“*ex parte* in-court testimony or its functional equivalent—that is, material such as affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine, or similar pretrial statements that declarants would reasonably expect to be used prosecutorially,” “extrajudicial statements . . . contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions,” [and] “statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial[.]” These formulations all share a common nucleus and then define the Clause’s coverage at various levels of abstraction around it. Regardless of the precise articulation, some statements qualify under any definition—for example, *ex parte* testimony at a preliminary hearing.

Statements taken by police officers in the course of interrogations are also testimonial under even a narrow standard.^[11]

In *Davis v Washington*,¹² the United States Supreme Court quoted the definition of “testimony” from *Crawford*,¹³ and stated, “A limitation so clearly reflected in the text of the constitutional provision must fairly be said to mark out not merely its ‘core,’ but its perimeter.” The Court provided further guidance with respect to statements made in response to interrogation by law enforcement officers and differentiated those from statements made in response to interrogation to enable police assistance to an ongoing emergency where “the primary purpose is to establish or prove past events potentially relevant to later criminal prosecution.”¹⁴

In *People v Taylor*,¹⁵ the Michigan Supreme Court considered statements that were *not* made to government agents or the police. In that case, the defendants Taylor, King, and Scarber were involved in a kidnapping and murder.¹⁶ Scarber was tried before a separate jury.¹⁷ Troy Ervin, a former friend of Scarber’s and an associate of Taylor and King, testified about statements that Scarber made that inculpated King.¹⁸ The Court concluded that Scarber’s

¹¹ *Id.* at 51-52 (internal citations omitted).

¹² *Davis v Washington*, 547 US 813, 824; 126 S Ct 2266; 165 L Ed 2d 224 (2006).

¹³ *Crawford*, 541 US at 51.

¹⁴ *Davis*, 547 US at 822.

¹⁵ *Taylor*, 482 Mich at 371-372.

¹⁶ *Id.* at 370-371.

¹⁷ *Id.* at 372.

¹⁸ *Id.* at 374.

statements did not implicate the Confrontation Clause because they were not testimonial.¹⁹ The Court explained:

Scarber’s statements to Ervin were nontestimonial because they were made informally to an acquaintance, not during a police interrogation or other formal proceeding, see *Crawford, supra* at 68, or under circumstances indicating that their “primary purpose” was to “establish or prove past events potentially relevant to later criminal prosecution,” *Davis, supra* at 822.^[20]

This Court has also held that evidence of statements made by a complainant to friends, coworkers, and a defendant’s relatives are not testimonial.²¹

C. APPLYING THE STANDARDS

In this case, Cornwell testified that she received information about the location of the stolen car from individuals who came to her home and that she reported that information to the police. These out-of-court statements to Cornwell by the unidentified individuals were not statements made to governmental authorities and were not made during a police interrogation or other formal proceeding.²² Moreover, the circumstances do not indicate that the “primary purpose” of the unidentified individuals’ statements was to “establish or prove past events potentially relevant to later criminal prosecution.”²³ Instead, their apparent primary purpose was simply to assist Cornwell in the retrieval of her stolen vehicle. Additionally, the statements were not offered to prove the truth of the matter asserted—that being the recovery location of the vehicle—which was not disputed.²⁴ Rather, the statements were offered to explain *how* the car was recovered.²⁵ Accordingly, the statements Cornwell referred to were not testimonial.

Williams also refers to a portion of Sergeant Hansberry’s testimony that, based on a “work-up” of a specified address on Meyers Rd., he determined that Williams lived there. However, Williams does not appear to directly challenge Sergeant Hansberry’s testimony. Rather, he discusses it in conjunction with Officer Jennings’ testimony, arguing that Officer Jennings’ testimony regarding the Meyers Rd. address was improperly used to obtain his

¹⁹ *Id.*

²⁰ *Id.* at 378.

²¹ *People v Bauder*, 269 Mich App 174, 180-181; 712 NW2d 506 (2005).

²² See *Taylor*, 482 Mich at 378.

²³ *Id.*, quoting *Davis*, 547 US at 822.

²⁴ See *People v Chambers*, 277 Mich App 1, 10-11; 742 NW2d 610 (2007) (“The Confrontation Clause does not bar the use of out-of-court testimonial statements for purposes other than establishing the truth of the matter asserted.”).

²⁵ See *id.* at 11 (“[A] statement offered to show the effect of the out-of-court statement on the hearer does not violate the Confrontation Clause. . . . Specifically, a statement offered to show why police officers acted as they did is not hearsay.”).

conviction. As noted above, Officer Jennings testified that he received a dispatch reporting the location of the stolen car and that the person who occupied that vehicle was an occupant of a particular house on Meyers Rd.

Again, however, Williams has not shown that the challenged statements were “testimonial.” Cornwell testified that she told the police where her car was located and “I told them that I was told that the suspect lived right behind where the car was parked.” As we have explained, the statements made to Cornwell were not testimonial. Further, as in *People v Jackson*,²⁶ the dispatcher’s statement to Officer Jennings was not admitted to prove the truth of the matter asserted but merely mentioned to show the reason for the police officers’ presence at the scene. Accordingly, we conclude that Williams has not established a violation of his Sixth Amendment right of confrontation.

We affirm.

/s/ David H. Sawyer
/s/ Richard A. Bandstra
/s/ William C. Whitbeck

²⁶ *People v Jackson*, 113 Mich App 620, 624; 318 NW2d 495 (1982).